

The Director's office, parties and the Administrative Law Judge all treated this proceeding as a preliminary hearing within the context of a post-award request for additional medical treatment. As such, the jurisdiction of the Appeals Board to review the preliminary hearing findings and conclusions by the Administrative Law Judge are as statutorily provided by K.S.A. 1995 Supp. 44-551(b)(2)(A) and K.S.A. 44-534a(a)(2). The Appeals Board has jurisdiction of this appeal pursuant to K.S.A. 44-534a(a)(2) as it concerns a finding with regard to a disputed issue of whether the employee's condition arose out of and in the course of her employment.

The claimant filed her Application for Preliminary Hearing seeking an order authorizing breast reduction surgery to be performed by Marc R. Baraban, M.D., a plastic surgeon. His office notes of November 27, 1995 and his December 28, 1995 letter to Blue Cross/Blue Shield were introduced as Claimant's Exhibit 3 to the preliminary hearing transcript. Although Dr. Baraban recommends the procedure and describes it as reconstructive, as opposed to cosmetic in nature, he does not relate the need for the procedure to claimant's work-related back injury. Dr. Baraban relates that claimant complains of chronic back pain and that she feels that her large breasts exacerbate this problem. However, he does not give an opinion in this regard. He further states that he can give no assurance whatsoever that her symptoms would change if she undertook this surgery.

Also in evidence as a part of Claimant's Exhibit 3 are the September 20, 1995 clinical notes and January 24, 1996 report of Michael T. McCoy, M.D., board-certified orthopedic surgeon. Dr. McCoy notes that claimant's history reveals a low back injury at work on April 14, 1992 with pain ever since. An MRI of the lumbar spine showed mild degenerative posterior bulging at L5-S1. Nerve conduction studies showed very mild left S1 radiculopathy. Her main complaints are of numbness and tingling down both legs, back pain and left hip pain. His treatment recommendations do not include reduction mammoplasty for relief of back pain. He states that he does not have an opinion one way or another as to whether or not such a procedure would be beneficial to the claimant.

The recommendation for the breast reduction procedure and the referral to Dr. Baraban came from Sharon L. McKinney, D.O., a specialist in physical medicine. Her report of December 11, 1995, which is contained within Claimant's Exhibit 2 to the preliminary hearing transcript, contains the following:

"Ms. Peggy Cox is a lady I have followed for some time for residuals of myoligamentous strain. She is a full bosomed woman and has alot of forward downward stress on the shoulder girdle muscles. She would like to get a breast reduction to relieve some of the weight and stress on her shoulder girdles and back. This would be a great benefit to her as it would help her posture somewhat, relieve some of the stresses on her spinal system as well as relieve the considerable discomfort on her upper shoulder girdles. I recommend she have the procedure done."

As claimant's counsel points out, Dr. McKinney's recommendation for this procedure is uncontradicted in the record. However, Dr. McKinney does not specifically relate the need for this procedure to the April 23, 1993 accident which is the subject of the claim in Docket No. 177,100. The February 28, 1995 Work Sheet for Settlement in Docket Nos. 166,072 and 177,100 was made a part of the preliminary hearing record as Claimant's Exhibit 1. It provides for a lump sum payment on a strict compromise settlement of both claims, with dates of accident of April 14, 1992 and April 23, 1993, respectively. A report by Dr. McKinney dated April 6, 1994 is attached to that settlement hearing work sheet. In it, both accidents are described as causing injury to claimant's low back with radiculopathy to the lower extremities, but claimant is described as not being a surgical candidate.

Although Dr. McKinney mentions the "spinal system," it is difficult to reconcile and relate the present need for the requested surgical procedure intended to relieve "forward downward stress on the shoulder girdle muscles" to the low back injury of April 23, 1993.

As respondent's counsel points out and as claimant admits, the condition for which she now seeks treatment preexisted her work injury. In addition, there have been several incidents since her work-related accident which have aggravated her symptoms. The record is not clear as to whether these would be considered to have resulted from the original injury or whether they would constitute separate and distinct accidents. The Appeals Board finds that the record, as it presently exists, does not satisfy claimant's burden of proof that the medical treatment being sought is directly related to the compensable injury. As such, the finding by the Administrative Law Judge that claimant's

need for breast reduction surgery is not caused by her work-related injury involving the low back is affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Floyd V. Palmer dated February 19, 1996 is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1996.

BOARD MEMBER \_\_\_\_\_

BOARD MEMBER \_\_\_\_\_

BOARD MEMBER \_\_\_\_\_

c: John M. Ostrowski, Topeka, KS  
James E. Benfer, Topeka, KS  
Matthew S. Crowley, Topeka, KS  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director